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In re Application of	:	
KIM et al.	:	
Serial No.: 10/577,433	:	DECISION ON
PCT App. No.: PCT/KR04/02732	:	
Int'l Filing Date: 27 October 2004	:	PETITION UNDER
Priority Date: 27 October 2003	:	
Attorney Docket No.: 1012679-000120	:	37 CFR 1.181
For: MOLECULAR MARKER ASSOCIATED	:	
WITH CMV RESISTANCE AND USE THEREOF	:	

This is a decision on applicant's "Response to Notification of Missing Requirements under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US)", filed on 09 April 2009 in the US Patent and Trademark Office, treated as a petition under 37 CFR 1.181. No petition fee is required. This is also responsive to applicant's 11 January 2010 Response to the Notification of Defective Response.

### **BACKGROUND**

On 27 April 2006, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee.

On 09 February 2007, the Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that oath or declaration, in compliance with 37 CFR 497(a) and (b) and executed by the inventors, and the surcharge for filing the oath or declaration after the thirty month period, was required. The notification set a TWO (2) MONTH period for response.

On 09 April 2007, applicant filed the present petition requesting that the Office accept a copy of the executed declaration in lieu of the original declaration along with a copy of the USPTO date-stamped itemized post card receipt.

On 11 December 2009, the Office mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the requirements set forth in the Notification of Missing Requirements had not been completed. Specifically, the applicant failed to pay the surcharge for filing the declaration after the thirty month period. A filing receipt was also mailed. On 11

January 2010, applicant filed a Response to the Notification of Defective Response.

### DISCUSSION

The declaration allegedly submitted on 27 April 2006 is not found in the application file.

As stated in section 503 of the Manual of Patent Examining Procedure (MPEP):

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which a receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of invention, etc.

With his petition, Petitioner provided a copy of the declaration filed on 27 April 2006 and a copy of the USPTO date-stamped postcard receipt indicating that a declaration was filed along with the originally filed national stage application papers. The postcard identifies the first applicant/inventor's name, title of the invention and docket number. Among the items listed on the postcard receipt are "Executed Declaration/Power of Attorney". The postcard is date-stamped by the USPTO "OIPE APR 27 2006".

A review of the USPTO date-stamped, itemized postcard receipt indicates that the executed declaration was deposited with the USPTO on 27 April 2006. Applicant has now presented a copy of the declaration papers originally filed on 27 April 2006 and provided a copy of the date-stamped postcard receipt. Thus, the evidence is sufficient to establish that the declaration was received in the USPTO on 27 April 2006 and that the postcard receipt indicating a date of 27 April 2006 was mailed by the USPTO. Accordingly, the Office accepts the copy of the declaration papers as a replacement for the missing original documents with a deposit date of 27 April 2006.

In addition, it is noted that the \$65 surcharge for filing the declaration after the thirty month period is not required as the declaration was submitted on 27 April 2009 which is prior to the expiration of the thirty month period. In light of this decision, the \$65 surcharge is unnecessary and will be refunded.

### CONCLUSION

Applicant's petition under 37 CFR 1.181 to accept a copy of the declaration originally filed on 27 April 2006 is GRANTED. The \$65 surcharge will be refunded to applicant's deposit account.

Application No.: 10/577,433

A copy of the declaration originally submitted on 27 April 2006 and resubmitted on 09 April 2009 is acceptable and meets the requirements of 37 CFR 1.497(a) and (b).

The application will be forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing including a Notification of Acceptance with a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 27 April 2006.

/Cynthia M. Kratz/

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